

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of License 9947 (Application 21429)

Jack L. Cox, Raynette Cox, Ronald W. McGehee, Claude M. Steiner

**ORDER ISSUING SEPARATE LICENSES AND
SUPERCEDING ORIGINAL LICENSE 9947**

SOURCE: Unnamed Stream tributary to York Creek thence Russian River

COUNTY: Mendocino County

WHEREAS:

1. License 9947 (Application 21429) was issued to the Estate of Edward A. Howard, Jr. on August 7, 1972, and recorded by the County Recorder of Mendocino County, in Book 896, page 186, on August 10, 1972.
2. The Division of Water Rights (Division) record of ownership for License 9947 shows the current holders of the license as Jack L. Cox, Raynette Cox, Ronald W. McGehee and Claude M. Steiner (all herein referred to as "Licensees").
3. Division conducted a compliance inspection of License 9947 on August 23, 2001, and found that the Place of Use has expanded, Points of Rediversion have been added, no records of diversion and use have been maintained, and the capacity of the reservoir has been significantly reduced by landslides and siltation. Corrections are required to the descriptions of the Point of Diversion and Place of Use. A Point of Rediversion should also be added as a correction.
4. Licensees have entered into private agreements regarding diversion and use of water from the reservoir. The Division is not a party to these agreements and takes no position as to the consistency of the agreements with the license.
5. In view of the agreements for operation of the reservoir and in view of conversion of the original Place of Use from pasture to vineyard, sufficient water may exist for development of additional lands for Irrigation. Licensees have expressed an interest in changing the license to add property to the Irrigation Place of Use.
6. The Division required Licensees to identify one person to represent them in dealing with all matters pertaining to License 9947 and to file a consolidated petition to change the Place of Use.
7. On January 6, 2003, Mr. Cox filed a petition to reflect changes necessary for his use of water. On December 23, 2002, Mr. McGehee and Mr. Steiner jointly filed a petition identifying changes they desire for License 9947. All parties' efforts to file a single petition or communicate to the Division their individual permissions to combine their separate petitions, in order to indicate a common intent of all the owners, have been delayed by the apparent inability of the co-owners to agree on a common course of action.

8. Based on the above information, the Division has determined that License 9947 should be superceded and three separate licenses issued to Jack and Raynette Cox, Ronald McGehee, and Claude Steiner.
9. The State Water Resources Control Board (State Water Board) standard license terms pertaining to continuing authority, water quality objectives, protection of endangered species, and the need for a State Department of Fish and Game stream alteration agreement shall be added or updated to each license. Requirements for measuring devices will also be added to the licenses.
10. The State Water Board has determined the separate licenses do not constitute initiation of new rights, and do not injure prior rights or the public trust resources of the State.

THEREFORE, IT IS ORDERED:

1. License 9947 is superceded by License 9947A, issued to Jack L. Cox and Raynette Cox, License 9947B, issued to Ronald W. McGehee, and License 9947C, issued to Claude M. Steiner. The priority of Licenses 9947A, 9947B, and 9947C is August 15, 1963.
2. Licenses 9947A, 9947B and 9947C are all issued with Domestic, Irrigation, Stockwatering, Recreational and Fire Protection uses defined as purposes of use. The description of the Irrigation Place of Use and Point of Diversion are corrected based on findings from the inspection on August 23, 2001. The amounts for collection and withdrawal for beneficial use are the same for each license, and a combined total amount is added to limit the three licenses to the superceded license amount. Private agreements may define the respective quantities that each Licensee may withdraw from the reservoir, but these agreements are not part of the licenses. Each Licensee has the opportunity to file and proceed with a petition to change the Place of Use under his license and protest the other petitions, if desired.
3. Licensees shall individually submit, or as appropriate, cooperate to submit, the following:
 - a) Within 60 days of the date of this Order, each Licensee shall ensure that all petitions required to change each respective amended license have been submitted, are complete, accurate in respect to the petitioner's needs and include all required fees and documents. Additional fees may be required for petitions previously submitted but not accepted by the Division due to recent changes to the fee schedule. If the Licensee(s) intend to restore the reservoir to its licensed capacity, the Licensee(s) shall submit a restoration proposal to the Division in conjunction with the change petition(s) and shall address appropriate permitting and environmental issues of the restoration project during processing of the change petition(s).
 - b) Within 90 days of the date of any Order approving their individual change petition(s), Licensee(s) shall provide a plan, including a projected time schedule (not to exceed 5 years), for development of the petitioned changes and completion of any reservoir restoration work.
 - c) Within 90 days of the date of this Order, provide a plan for the installation of required measuring devices including a staff gauge in the reservoir. An area capacity curve (depth to corresponding volume) of the reservoir shall be developed by a registered engineer or land surveyor and correlated to the staff gauge. Where devices are already installed, provide evidence that the devices are properly installed, operating, and appropriate for the required data collection.

4. Failure to comply with the provisions and conditions in this Order or the State Water Board's denial or rejection of a proposed petition for change, shall cause the Division to amend the appropriate license(s) to reflect only each Licensee's individual uses and Place of Use existing at the time of inspection (August 23, 2001) without further notification or opportunity for hearing.

STATE WATER RESOURCES CONTROL BOARD



*Victoria A. Whitney, Chief
Division of Water Rights*

Dated: **APR 17 2006**



STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

Amended License for Diversion and Use of Water

APPLICATION 21429B
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PERMIT 14381

LICENSE 9947B

THIS IS TO CERTIFY, That

Ronald W. McGehee
537 Parducci Road
Ukiah, CA 95482

has the right to the use of the waters of an **Unnamed Stream** in **Mendocino County**

tributary to **York Creek** thence **Russian River**

for the purpose of **Irrigation, Domestic, Stockwatering, Recreational and Fire Protection uses.**

Amended License 9947B supersedes the license originally issued on **August 7, 1992**, which was perfected in accordance with the laws of California, the Regulations of the State Water Resources Control Board (SWRCB), or its predecessor, and the terms of **Permit 14381**. The priority of this right dates from **August 15, 1963**. Proof of maximum beneficial use of water under this license was made as of **May 15, 1972 and August 23, 2001** (the dates of inspection).

The amount of water to which this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated purposes and shall not exceed **two hundred and ninety (290) acre-feet per annum to be collected from October 1 of each year to May 31 of the succeeding year. The maximum withdrawal in any one year under this license, License 9947A (Application 21429A) and License 9947C (Application 21429C) shall not exceed 265 acre-feet.**

This license does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

The maximum amount of water collected to storage under this license, License 9947A (Application 21429A) and License 9947C (Application 21429C) shall not exceed 290 acre-feet per year.

The capacity of the reservoir covered by this license, License 9947A (Application 21429A) and License 9947C (Application 21429C) shall not exceed 290 acre-feet.

Unless a change is approved by the SWRCB, water used under this license may be diverted, rediverted, stored and used only as specified below:

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

By California Coordinate System of 1927, Zone 2, North 565,234 feet and East 1,651,974 feet, being within NE¼ of SE¼ of projected Section 30, T16N, R12W, MDB&M.

THE POINT OF REDIVERSION OF SUCH WATER IS LOCATED:

By California Coordinate System of 1927, Zone 2, North 566,119 feet and East 1,653,605 feet, being within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 29, T16N, R12W, MDB&M.

A DESCRIPTION OF THE LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

Stockwatering and Recreational use at Round Mountain Reservoir; Fire Protection and Domestic use within NW $\frac{1}{4}$ of SW $\frac{1}{4}$ and SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 29, T16N, R12W, MDB&M and Irrigation use as follows:

- 1.7 acres within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 29, T16N, R12W, MDB&M
- 3.9 acres within NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of projected Section 29, T16N, R12W, MDB&M
- 3.7 acres within NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 30, T16N, R12W, MDB&M
- 8.8 acres within NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 30, T16N, R12W, MDB&M
- 14.6 acres within SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 30, T16N, R12W, MDB&M
- 3.1 acres within NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 30, T16N, R12W, MDB&M

35.8 acres total, as shown on map dated August 23, 2001, on file with the SWRCB.

This license shall not be construed as conferring upon the licensee the right of access to the point of diversion, point of rediversion, or the place of use.

(0000022)

Licensee shall maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the Chief of the Division of Water Rights, in order that water entering the reservoir which is not authorized for appropriation under the license may be released.

(0050043)

Licensee shall maintain in the reservoir a staff gage, satisfactory to the Chief of the Division of Water Rights, for the purpose of determining water levels in the reservoir. Licensee shall record the staff gage reading monthly on or about the first of the month. A copy of the records shall be submitted to the SWRCB with each "Report of Licensee."

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(0100047)

Licensee shall maintain an in-line flow meter, satisfactory to the Chief of the Division of Water Rights, to measure the cumulative monthly amount of water used for irrigation. A record of such measurements shall be maintained by the licensee, and made available to interested parties upon reasonable request. A copy of the records shall be submitted to the SWRCB with each "Report of Licensee."

(0060800)

(0090800)

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

Reports shall be filed promptly by the licensee on the appropriate forms which will be provided for the purpose from time to time by the SWRCB.

Licensee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by the SWRCB, reasonable access to project works to determine compliance with the terms of this license.

Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution article X, section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

The quantity of water diverted under this license is subject to modification by the SWRCB if, after notice to the licensee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

This license does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.

If construction or rehabilitation work is required for the diversion works covered by this license within the bed, channel, or bank of the affected water body, the licensee shall enter into a streambed or lake alteration agreement with the State Department of Fish and Game. Licensee shall submit a copy of the agreement, or waiver thereof, to the Division of Water Rights prior to commencement of work. Compliance with the terms and conditions of the agreement is the responsibility of the licensee.

This license is granted and the licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the SWRCB.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

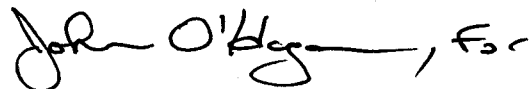
Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article (of the Water Code) and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

STATE WATER RESOURCES CONTROL BOARD



*Victoria A. Whitney, Chief
Division of Water Rights*

Dated: **APR 17 2006**